**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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**C.W.P. No.14269 of 2006**
**Date of Decision:12.10.2006**

**M/s Sonu Rice Mills, Dhani Bachan Singh, Tehsil Ellenabad, Sirsa**

**.....Petitioner**

**Vs.**

**State of Haryana and others**

**.....Respondents**

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL**
**HON'BLE MR. JUSTICE RAJESH BINDAL**

Present:- Mr. Avneesh Jhingan, Advocate for the petitioner.

Ms. Ritu Bahri, DAG, Haryana.

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**RAJESH BINDAL, J.**

The petitioner has approached this Court praying for the quashing of orders Annexures P.3 and P.5 dated 29.3.2004 and 27.7.2006 passed by Lower Level Screening Committee (for short, `the LLSC') and the Higher Level Screening Committee (for short, `the HLSC') respectively and in the alternative, the prayer is that order dated 27.7.2006 be quashed and the matter be remitted back to the HLSC for decision of his appeal on merits after affording an opportunity of being heard.

Briefly the facts of the case are that the petitioner set up rice Sheller at Dhani Bachan Singh, Tehsil Ellenabad, Sirsa and in terms of the provisions of Rule 28A of the Haryana General Sales Tax Rules 1975 (for

short, `the Rules'), the petitioner was granted eligibility certificate on 25.6.1996 with validity from 13.11.1995 to 12.11.2004. In pursuance to the eligibility certificate, the petitioner was granted exemption certificate on 8.7.1996. The maximum amount of benefit for exemption of tax available to the petitioner was determined at Rs.18,18,212/-. On 25.7.2003, the petitioner was served with a notice by the General Manager, District Industries Center, Sirsa to show cause as to why the eligibility certificate granted to the petitioner be not withdrawn as the unit of the petitioner was lying closed for the last one year. In response thereto, the petitioner stated that the unit is very well working. It was per chance that on a particular date i.e. 17.12.2002, when the unit was inspected, it was lying closed. To buttress his contention, the petitioner even furnished the figures of turnover for the alleged period of closure and thereafter. However, when the matter was taken up in the meeting of the LLSC held on 6.11.2003, in exercise of powers under Rule 28A(8)(a) of the Rules, the eligibility certificate granted to the petitioner was withdrawn on the ground that the petitioner had closed down its business during the currency of the eligibility certificate. The decision was conveyed to the petitioner vide memo dated 29.3.2004.

Aggrieved against the order passed by the LLSC, the petitioner preferred statutory appeal before the HLSC. In appeal, the petitioner specifically controverted the findings recorded by the LLSC to the effect that the unit had been closed during the currency of eligibility certificate. The appeal filed by the petitioner was fixed before the HLSC on 8.6.2006. Since the counsel for the petitioner was not available on that date, a telegram was sent seeking adjournment on 7.6.2006. As is evident from the minutes of the meeting of the HLSC held on 8.6.2006, in the absence of

representation on behalf of the petitioner, the appeal was considered and rejected. It was recorded in the minutes that `it is an undisputed fact that the unit was lying closed since 1998 and no industrial activities was going on there since long'. The contention of the petitioner is that the admission recorded on the part of the petitioner to the effect that the unit was lying closed since 1998 is not only contrary to the stand taken by the petitioner before the LLSC but was also against the specific ground raised by the petitioner while challenging the order of the LLSC before the HLSC. Adding further to substantiate his plea, the petitioner has also placed on record assessment orders passed under the provisions of the Haryana General Sales Tax Act for the years subsequent to 1998.

Relying upon the above material, the contention of the petitioner is that the facts recorded by the HLSC, in the absence of representation by the petitioner, are totally perverse and not borne out from the record and accordingly prayed that the order passed by the HLSC deserves to be set aside and the petitioner be afforded an opportunity of hearing to appear and plead his case before the HLSC.

In reply filed to the petition, the facts regarding telegram for adjournment sent by the petitioner have not been specifically controverted or replied to. Though merely by sending a telegram, no right is vested in a party to presume that the adjournment is to be granted but keeping in view the facts of the present case where we find that the admission recorded by the HLSC in the order impugned is not borne out from the record, without expressing any final view on the documents and material relied upon by the petitioner to substantiate his claim, we deem it appropriate to remit the case back to the HLSC for decision thereof on merits after affording an

opportunity of hearing to the petitioner.

Accordingly, order dated 27.7.2006 (Annexure P.5) is quashed and the matter is remitted back to the HLSC for decision afresh within a period of three months from the receipt of a copy of this order.

The writ petition is disposed of in the matter indicated above with no order as to costs.

**( RAJESH BINDAL )**
**JUDGE**

**October 12, 2006** **( ADARSH KUMAR GOEL )**
**renu** **JUDGE**